Menteri Besar Selangor (Pemerbadanan) v Faekah bt Hj Hussin & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCVC)(W)-907–05 OF 2017
TENGKU MAIMUN, HASNAH HASHIM AND HARMINDAR SINGH JJCA
26 OCTOBER 2018

Companies and Corporations — Suit by company — Suit against former employees — Claim for return of monies paid for compensation in lieu of notice — Whether board of directors existed — Whether payment made with approval of board of directors — Whether payment valid — Whether respondents were unjustly enriched — Whether decision of learned judicial commissioner plainly wrong and merited appellate intervention — Menteri Besar Selangor (Incorporation) Enactment 1994

The appellant was a body corporate established pursuant to the Menteri Besar Selangor (Incorporation) Enactment 1994 ('the MBI Enactment') whereas the respondents were the former employees of the appellant. The dispute in the present case stemmed from the payment made by the appellant under a voluntary separation scheme ('the VSS') to the respondents for compensation in lieu of notice. The payment was made based on the first memo issued by the second respondent and the second memo issued by the first respondent. Both memos were approved by the then Menteri Besar Selangor, Tan Sri Abdul Khalid bin Ibrahim ('DW4'). In the High Court, the appellant's claim against the respondents was for the return of the monies paid on the ground that it was made pursuant to an alleged conspiracy on the part of the first and second respondents. As against the third to eighth respondents, the cause of action was premised on unjust enrichment as they had received the payments without any legal justification. The appellant submitted that there was a breach of fiduciary duty on the part of the first and second respondents. Further, the VSS payments were wrongful as it was made without the knowledge and/or approval of the appellant's board of directors ('the BOD'). The learned judicial commissioner ('the JC') opined that the BOD of the appellant did not exist in law and that DW4 was the sole decision maker of the appellant, as such, by carrying out DW4's instructions, the first and second respondents were not in breach of any fiduciary duty. The JC further held that there was no evidence of conspiracy and that the second memo could not be construed as an act of conspiracy between the first and second respondents. The JC dismissed the appellant's claim against the respondents, hence, the present appeal.

Held, allowing the appeal with no order as to costs and setting aside the orders of the High Court:

(1) The BOD of the appellant consisted of the Menteri Besar as Chairman, State Secretary of the State Government of Selangor and the State Financial Officer. The court agreed that the MBI Enactment did not expressly provide that the appellant ought to have a BOD. Nevertheless, the evidence clearly established that a BOD existed, and all decisions were made by the BOD except for the authorising the VSS payments to the respondents. The JC had fundamentally erred in law and fact when he concluded that the BOD of the appellant was illusory and did not exist (see paras 28–29).

(2) Decision made by the Menteri Besar in his capacity as the Chairman of the appellant must be with approval of the BOD. Decision without the approval of the BOD ought to be ratified by the BOD. In the present case, DW4 had agreed to the proposal as set out in the second memo and directed payments. There was no BOD's meeting convened to determine the method of calculating the VSS payments. Further, the second memo had not been tabled to the BOD for ratification. DW4 as the Chairman of the appellant could not make any decision unilaterally as all payments and benefits involving the appellant ought to be properly authorised (see paras 34 & 36–38).

(3) The payment instructions both dated 22 September 2014 for the sums of RM2,271,462 and RM490,101 respectively were signed by the first respondent, the second respondent and PW3 with the knowledge that both the second respondent and PW3 were only authorised to sign off payments not exceeding RM100,000. Since the second memo was not ratified by the BOD, the payment instructions for the sums of RM2,271,462 and RM490,101 respectively were unauthorised and invalid (see para 40).

(4) The unauthorised payments was an act done by the respondents as officer and/or servant of the appellant to gain directly or indirectly an improper advantage for themselves. It would be manifestly unfair and unjust for the respondents to be enriched with the unauthorised payments at the appellant's expense. In totality, the JC had failed to judicially appreciate the evidence, and/or the law presented before him so as to render his decision plainly wrong and merited appellate intervention (see paras 41–43).

[Bahasa Malaysia summary

Perayu adalah badan korporat yang ditubuhkan menurut Enakmen Menteri Besar Selangor (Penubuhan) 1994 ('Enakmen MBP') manakala responden adalah bekas pekerja perayu. Pertikaian dalam kes ini berpunca dari pembayaran yang dibuat oleh perayu di bawah Skim Pemisahan Sukarela

('SPS') kepada responden untuk ganti rugi sebagai ganti notis. Bayaran telah dibuat berdasarkan memo pertama yang dikeluarkan oleh responden kedua dan memo kedua yang dikeluarkan oleh responden pertama. Kedua-dua memo tersebut telah diluluskan oleh Menteri Besar Selangor pada ketika itu iaitu Tan Sri Abdul Khalid bin Ibrahim ('DW4'). Di Mahkamah Tinggi, tuntutan perayu terhadap responden adalah untuk pemulangan wang yang telah dibayar atas alasan bahawa ia dibuat berdasarkan konspirasi di pihak responden pertama dan kedua. Bagi tuntutan terhadap responden ketiga hingga kelapan, kausa tindakan didasarkan pada pengkayaan tak adil kerana mereka telah menerima pembayaran tersebut tanpa alasan yang sah. Perayu berhujah bahawa terdapat pelanggaran tanggungjawab fidusiari di pihak responden pertama dan kedua. Selanjutnya, bayaran PSP yang dibuat adalah salah kerana ia dibuat tanpa pengetahuan dan/atau kelulusan lembaga pengarah ('LP') perayu. Pesuruhjaya kehakiman ('PK') yang bijaksana mendapati bahawa LP perayu tidak wujud dalam undang-undang dan DW4 adalah pembuat keputusan tunggal perayu, oleh itu, dengan melaksanakan arahan DW4, responden pertama dan kedua tidak melanggar apa-apa tanggungjawab fidusiari. Pesuruhjaya kehakiman selanjutnya berpendapat bahawa tidak ada bukti konspirasi dan memo kedua tersebut tidak boleh ditafsirkan sebagai tindakan konspirasi antara responden pertama dan responden kedua. Pesuruhjaya kehakiman telah menolak tuntutan perayu terhadap responden, oleh itu, rayuan semasa.

Diputuskan, membenarkan rayuan tanpa perintah untuk kos dan mengenepikan perintah Mahkamah Tinggi:

(1) Lembaga pengarah perayu terdiri daripada Menteri Besar sebagai Pengerusi, Setiausaha Kerajaan Negeri Selangor dan Pegawai Kewangan Negeri. Mahkamah bersetuju bahawa Enakmen MBP tidak menyatakan dengan jelas bahawa perayu sepatutnya mempunyai LP. Walau bagaimanapun, keterangan membuktikan bahawa suatu LP wujud, dan semua keputusan telah dibuat oleh LP kecuali keputusan untuk membenarkan pembayaran SPS kepada responden. Pesuruhjaya kehakiman pada asasnya telah terkhilaf dari segi undang-undang dan fakta apabila beliau membuat kesimpulan bahawa LP perayu adalah ilusi dan tidak wujud (lihat perenggan 28–29).

(2) Keputusan yang dibuat oleh Menteri Besar atas kapasitinya sebagai pengerusi kepada perayu harus dengan persetujuan LP. Keputusan tanpa kelulusan LP perlu disahkan oleh LP. Dalam kes ini, DW4 telah bersetuju dengan cadangan seperti yang dinyatakan dalam memo kedua tersebut dan beliau telah mengarahkan agar pembayaran dibuat. Tidak ada mesyuarat LP yang diadakan untuk menentukan kaedah pengiraan pembayaran SPS. Seterusnya, memo kedua tidak dibentangkan kepada LP bagi tujuan ratifikasi. DW4 sebagai pengerusi perayu tidak boleh membuat keputusan secara bersendirian kerana semua pembayaran dan

faedah yang melibatkan perayu sepatutnya disahkan dengan betul (lihat perenggan 34 & 36–38).

(3) Arahan pembayaran yang kedua-duanya bertarikh 22 September 2014 yang masing-masing berjumlah RM2,271,462 dan RM490,101 telah ditandatangani oleh responden pertama, responden kedua dan PW3 dengan pengetahuan bahawa kedua-dua responden dan PW3 hanya diberi kuasa untuk menandatangani bayaran tidak melebihi RM100,000. Oleh kerana memo kedua tersebut tidak disahkan oleh LP, arahan bayaran bagi jumlah sebanyak RM2,271,462 dan RM490,101 adalah tanpa kebenaran dan tidak sah (lihat perenggan 40).

(4) Pembayaran tanpa kebenaran tersebut adalah perbuatan yang dilakukan oleh responden-responden sebagai pegawai dan/atau perkerja perayu untuk memperoleh keuntungan secara langsung atau tidak langsung untuk diri mereka sendiri. Adalah jelas tidak adil responden-responden diperkayakan dengan bayaran yang tidak dibenarkan di atas perbelanjaan perayu. Secara keseluruhannya, PK gagal mempertimbangkan bukti, dan/atau undang-undang yang dikemukakan di hadapannya yang mengakibatkan keputusannya jelas salah dan mewajarkan campur tangan rayuan (lihat perenggan 41–43).]

Notes

For cases on suit by company in general, see 3(1) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 1302–1313.

Cases referred to

Gin Poh Holdings Sdn Bhd (in voluntary liquidation) v The Government of the State of Penang & Ors [2018] 3 MLJ 417, FC (refd)

Legislation referred to

Companies Act 1965
Delegation of Powers Act 1956 s 9
Incorporation (State Legislatures Competency) Act 1962 s 3, First Schedule, Item 5
Menteri Besar Selangor (Incorporation) Enactment 1994 s 4
State Constitution of Selangor arts 51, 53

Appeal from: Suit No 22NCVC-255–05 of 2015 (High Court, Shah Alam)

Gopal Sri Ram (Edwin Lim, Masturina Mohamad Radzi, Chin Yan Leng and David Yii with him) (Edwin Lim & Suren) for the appellant.
Edmund Bon (New Sin Yew with him) (Amerbon) for the first, second, third, fourth, fifth, seventh and eight respondents.

Hasnah Hashim JCA (delivering judgment of the court):

[1] This is an appeal by the appellant against the decision of the High Court dated 31 March 2017 made after a full trial, which dismissed the plaintiffs claim against the defendants.

[2] We had on 25 May 2018, after perusing the records of appeal and hearing submissions from learned counsel for the appellant as well as the respondents, unanimously allowed the appeal with no order as to costs. We set out below our reasons.

[3] For ease of reference in this judgment the parties will be referred to as they were in the High Court.

[4] The plaintiff is a body corporate established pursuant to the Menteri Besar Selangor (Incorporation) Enactment 1994. The defendants are former employees of the plaintiff.

MATERIAL FACTS

[5] The plaintiff's claim against the defendants is for the repayment of sum of RM2,713,590 paid to the defendants under a voluntary separation scheme ('VSS').The defendants were appointed as contract officers of the plaintiff during the tenure of Tan Sri Abdul Khalid bin Ibrahim ('DW4') who was the then Menteri Besar of Selangor.

[6] On 23 September 2014, DW4 resigned as the Menteri Besar of Selangor. Prior to DW4's resignation, DW4 held a meeting with the then State Secretary of the State Government of Selangor ('the SS') and the State Financial Officer ('SFO'), Dato' Noordin bin Sulaiman ('PW2') on 25 August 2014 where it was agreed in principle that the plaintiff pays the defendants compensation in lieu of notice by way of VSS. However, no board meeting was held to discuss the method of calculation of the compensation to the defendants.

[7] On 20 September 2014, the second defendant issued a memo ('the first memo') to the first defendant. The said first memo proposed three options for the purported VSS. It was proposed that the defendants be compensated equivalent to three months' salary in lieu of notice as per the terms of the employment contract. The first memo was approved by DW4 without indicating which option to be applied and endorsed by DW4 with the words 'setuju dilaksanakan'.

[8] Subsequently, the first defendant issued a second memo to DW4 and

the second defendant dated 20 September 2014 proposing that all contract employees be paid three months' salary in lieu of notice as per their employment contracts ('the second memo'). It was also proposed that the VSS payments be paid at the rate of 30% of the final salary, multiplied by the number of months served, in particular to those who had served more than four years. This second memo was approved and endorsed by DW4 with the notation:

> Puan Rohany, setuju dilaksanakan

[9] DW4 in his capacity as the Menteri Besar of Selangor approved the payment under the VSS as follows:

(a) three months' salary in lieu of notice to all contract officers; and

(b) a further VSS payment at the rate of 30% of final salary multiplied by the number of months served, to those contract officers who had served the Menteri Besar of Selangor for more than four years.

[10] Pursuant to the approval by DW4, the payments under the VSS scheme were made on 2 September 2014 by bank transfer and on 23 September 2014 by cheque. The claim against the defendants is for the return of the monies paid on the ground that it was made pursuant to an alleged conspiracy on the part of the first and second defendants. It is the plaintiff's pleaded case that there was a breach of fiduciary duty on the part of the first and second defendants. As against tthe third to eighth defendants the cause of action was premised on unjust enrichment as they had received the payments without any legal justification.

[11] It is the plaintiff's contention that the VSS payments were wrongful as it was made without the knowledge and/or approval of the plaintiffs board of directors. It is also contended by the plaintiff that the first and second defendants, as the Chief Executive Officer ('CEO') and Chief Operating Officer ('COO'), respectively of the plaintiff, had conspired to injure the plaintiff in proposing the VSS payments to be made to all the defendants. Further, the first and second defendants had breached their fiduciary duties owed to the plaintiff by causing the VSS payments to be made to the defendants. DW4 had interfered with the contract of employment of the defendants with the plaintiff.

[12] The defendants contended that the Menteri Besar of Selangor had the authority to approve the VSS payments and therefore the said payments were valid. The plaintiff is a statutory corporation sole and its authority is solely exercised by DW4 as the Menteri Besar.

[13] The learned judicial commissioner had on 31 March 2017 dismissed the plaintiff's claim against the defendants.

THE FINDINGS OF THE LEARNED JUDICIAL COMMISSIONER

[14] The learned judicial commissioner found that there was no evidence that DW4 had by virtue of s 9 of the Delegation of Powers Act 1956 ('the DPA') delegated his powers to the board of directors of the plaintiff, which does not even exist. Since there is no board of directors, DW4 is not bound by any decision of the board including the meeting which was held on 25 August 2014 between him, the SS and the SFO. His Lordship was of the considered view that DW4 can either choose to follow any decision made at the meeting or simply ignore the said decision. Since DW4 had approved the VSS payments, that approval must be duly implemented by the then officers of the plaintiff.

[15] The learned judicial commissioner having considered the facts and evidence before him found DW4 as the sole decision maker of the plaintiff. Thus, by carrying out DW4's instructions, the first and second defendants were not in breach of any fiduciary duty.

[16] Learned counsel for the plaintiff submitted that DW4 had interfered with the contract of employment of the defendants. However, since this allegation of interference was not pleaded by the plaintiff in its statement of claim the learned judicial commissioner did not consider this issue.

[17] On the allegation of conspiracy the learned judicial commissioner found that there was no evidence of conspiracy and that the second memo prepared by the first defendant could not be construed as an act of conspiracy between the first and second defendants.

OUR DECISION

The Menteri Besar Selangor (Incorporation) Enactment 1994

[18] The Menteri Besar Selangor (Incorporation) Enactment 1994 ('the MBI Enactment') provides that the person for the time being holding the office or performing the functions of Menteri Besar office shall be a body corporate under the name of 'Menteri Besar Selangor'. As a body corporate the plaintiff may sue and be sued in its name and shall have perpetual succession.

[19] Under the MBI Enactment the plaintiff may:

(a) enter into contracts;

(b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and

(c) convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any moveable or immovable property vested in the corporation.

(See: s 4 of the MBI Enactment.)

[20] The plaintiff is a distinct legal entity from the office of the Menteri Besar. Whilst the Menteri Besar is appointed pursuant to arts 51 and 53 of the State Constitution of Selangor, the plaintiff is an entity created pursuant to an Act. The scheme of the MBI Enactment is on its face straightforward. The Incorporation (State Legislatures Competency) Act 1962 ('Act 380'). Act 380 is an Act that empowers State Legislatures to make laws with respect to the incorporation of, among others, the Menteri Besar.

[21] In *Gin Poh Holdings Sdn Bhd (in voluntary liquidation) v The Government of the State of Penang & Ors* [2018] 3 MLJ 417 the Federal Court observed that Act 380 is 'An Act relating to the powers of State Legislatures to make laws with respect to the incorporation of certain persons and bodies within a State'.

Incorporation (State Legislatures Competency) Act (Act 380)

[22] In *Gin Poh* the Federal Court held as follows:

> It is not disputed that Act 380 relates, in pith and substance, to the incorporation of persons and bodies within a State. As discussed earlier, the incorporation of corporations (excluding municipal corporations), including all ancillary matters, are encompassed under item 8(c) of the Federal List. Additionally, Parliament is expressly authorised by art 76A of the Federal Constitution to delegate its legislative powers in respect of matters in the Federal List to the State Legislatures. In the present case, Parliament did so by enacting Act 380, which authorises State Legislatures to make laws with respect to the incorporation of, among others, the Chief Minister.

[23] Section 3 of Act 380 provides:

> It shall be within the power of the Legislature of a State, in relation to any matter specified in the First Schedule, to make laws with respect to the incorporation of any person or body within the State, and for such incidental and consequential matters in relation thereto (including the regulation and winding up of any person or body so incorporated) as the Legislature may deem necessary; and the Legislature may from time to time amend or repeal any such laws:
>
> Provided that with respect to the incorporation of any person or body within the State for the purpose of agricultural development or housing development or of

development of urban or rural areas, the special provisions prescribed in the Second Schedule hereto shall have effect.

[24] Item 5 of the First Schedule of Act 380 provides, inter alia, for the incorporation of the Menteri Besar:

1. State Scholarship.
2. State Educational Endowments.
3. Charities and Charitable Institutions.
4. Incorporation of the State Secretary.
5. *Incorporation of the Menteri Besar or Chief Minister*.
6. The Development of Urban and Rural Areas.
7. Assistance to Padi Planters.
8. State Parks.
9. Museums and Public Libraries.
10. Sultanate Lands.
11. Propagation of the teachings of Islam.
12. Economic and social development of the Islamic community.
13. Agricultural Development.
14. Housing Development.
15. Water Supply.
16. Customary Lands.
17. Water Resources Management.

THE BOARD OF DIRECTORS

[25] The plaintiff is a legislative creature entrusted with the responsibility, inter alia, to enable the state government to own assets and to manage the investments of the state government. It is undisputed fact that the plaintiff is not a company as defined under the Companies Act 1965 and thus, not required to comply with the provisions of the said Act.

[26] The learned judicial commissioner opined that the board of directors of the plaintiff does not exist in law. That there is no such designation as the chairman of the plaintiff, and the word 'chairman' does not even appear in the MBI Enactment and, that the SS and SFO, are in fact strangers to the plaintiff.

A **[27]** In reality however, and on the facts, the board of directors exists, which consists of the Menteri Besar as Chairman, the SS and the SFO. The day to day running of the plaintiff is helmed by the Chief Operating Officer ('COO'). The second defendant ('PW2') was the plaintiff's COO and in her witness statement (Q/A6) she explained:

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> MBI ditadbir oleh lembaga pengarah yang mana ahli-ahlinya terdiri daripada Menteri Besar Selangor, Setiausaha Kerajaan Negeri Selangor dan Pegawai Kewangan Negeri Selangor. MBI diuruskan oleh Ketua Pegawai Eksekutif yang dilantik oleh Lembaga Pengarah MBI dan dibantu oleh Ketua Pegawai Operasi.

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[28] We agree that the MBI Enactment does not expressly provide that the plaintiff must have a board of directors. However, the evidence clearly established that a board of directors existed and all decisions were made by the board of directors except for authorising the VSS payments to the defendants.

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[29] We say, with respect, that the learned judicial commissioner had fundamentally erred in law and fact when he concluded that the board of directors of the plaintiff is illusory and does not exist. DW4 himself confirmed that the board of directors indeed exist and had made decisions which were

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binding on the staff of the plaintiff. It therefore must follow that DW4 could not then ignore the board of directors and make the decision alone.

THE VSS PAYMENTS PROPOSAL

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[30] DW4 testified in order to facilitate the proper and efficient management of the plaintiff, he had implemented procedures to ensure transparency and good corporate governance. What is 'good governance'? Governance means the process of decision-making and the process by which

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decisions are either implemented or not. Good governance is participatory, consensus oriented, responsibility, accountability, transparency, responsive, effective and efficient, equitable and inclusive and follows the rule of law. Good corporate governance will assure that abuse of process is minimised.

H **[31]** DW4 had authorised and issued special guidelines for the administration and management of the finance, assets and services matters as the operating procedures of the plaintiff by the board of director's resolution dated 4 February 2013.

I **[32]** The 'Buku Panduan — Proses Urustadbir Setiausaha Syarikat' ('P4') was adopted as a guideline for the efficient management of the plaintiff. The guideline sets out in detail, inter alia, the internal financial and management procedures of the plaintiff, the procedures of the board of director's meeting,

which included preparation of documents, appointment of members of the board of directors as well as the overall management of the plaintiff for greater efficiency.

[33] As a statutory entity, the plaintiff is entrusted to hold assets and investments of the State of Selangor hence, such a mechanism was emplaced to prevent the abuse of process. In other words, matters relating to the administration and management, including but not necessarily limited to the business of the plaintiff, the Menteri Besar in his capacity as the chairman, cannot act on his own and must always be with the approval and consensus of the board of directors.

[34] Therefore, decision made by the Menteri Besar in his capacity as the chairman of the plaintiff must be with approval of the board. Decision without the approval of the board must be ratified by the board of directors. The second defendant in cross examination confirmed that in such circumstances the normal practice of the plaintiff would be to table such decision for ratification by the board.

[35] DW4 further confirmed during cross examination that the rationale of having a board of directors is to prevent any unilateral decision and to enhance efficiency in the management of the plaintiff:

Q: Do you agree with me that the idea of, the reason the rationale behind this (sic) having a board of directors is not to decide unilaterally but instead by majority of consensus. It is to avoid mismanagement. Do you agree?

A: *To get efficiency in management.*

Q: Ok. Do you agree with me that by doing so can also avoid mismanagement?

A: *Yes.*

[36] The board of directors of the plaintiff had resolved on 25 August 2014 that payment in lieu of notice and VSS was to be paid to the defendant. However, no board of directors' meeting was convened to determine the method of calculating the VSS payments.

[37] On 20 September 2014 the second defendant issued the first memo to DW4 as well as the first defendant proposing the payment of the VSS payments without such proposal being tabled to the board of directors. DW4 agreed to the proposal as set out in the second memo and directed payments. The plaintiff is the custodian of the state's assets and investments. Therefore, DW4

as the chairman of the plaintiff cannot make any decision unilaterally as all payments and benefits involving the plaintiff must be properly authorised.

[38] To ensure that there would not be any form of abuse of process, the second memo approved by DW4 unilaterally should have been tabled to the board of directors for ratification. This would be consistent with the requirements of the law as well as good corporate governance policy of accountability and transparency. This was not done.

[39] We are of the view that accountability, transparency and good governance cannot, in any manner, no matter how urgent it may be, be compromised. In essence, by unilaterally approving the proposal in the second memo and instructing payments, much of what DW4 had preached and introduced to ensure good corporate governance he, himself had failed to adhere.

[40] The payment instructions both dated 2 September 2014 for the sums of RM2,271,462 and RM490,101 respectively were signed by the first defendant, second defendant and PW3 with the knowledge that both the second defendant and PW3 were only authorised to sign off payments not exceeding RM100,000. In our judgment since the second memo was not ratified by the board of directors, the payment instructions for the sums of RM2,271,462 and RM490,101 respectively were unauthorised and invalid.

[41] The funds and assets of the plaintiff must be expended prudently, economically and with the utmost concern for value. The unauthorised payments was an act done by the defendants as officer and/or servant of the plaintiff to gain directly or indirectly an improper advantage for themselves.

[42] We agreed with the submission of learned counsel of the appellant that it would be manifestly unfair and unjust for the defendants to be enriched with the unauthorised payments at the plaintiff's expense.

CONCLUSION

[43] For the reasons we discussed above, we hold that the learned judicial commissioner had failed to judicially appreciate the evidence and/or the law presented before him so as to render his decision plainly wrong and upon curial scrutiny it merited our appellate intervention.

[44] We unanimously allowed the appeal with no order as to costs. We also set aside the orders of the High Court and we further ordered that the deposit be refunded. We further made orders as sought in prayers 51(a) and (b) of the statement of claim.

Appeal allowed with no order as to costs; orders of High Court set aside.

Reported by Dzulqarnain Ab Fatar